

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Date of Decision: 20.12.2022

ARB No. 233 of 2019 (O&M)

M/S CEIGAL BUILDERS PVT. LTD.

.....Petitioner

Vs

MUNICIPAL CORPORATION, LUDHIANA

.....Respondent

ARB No. 235 of 2019 (O&M)

M/S CEIGAL BUILDERS PVT. LTD.

.....Petitioner

Vs

MUNICIPAL CORPORATION, LUDHIANA & ANR

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Raman Sharma, Advocate and
Mr.Sushant Kareer, Advocate
for the petitioner.

Mr. Lovepreet Singh, Advocate
for the respondent.

RAJ MOHAN SINGH, J.(Oral)

Vide this common order, ARB Nos. 233 and 235 of

2019 are being disposed of. The facts are being culled out from ARB No. 233 of 2019.

The petitioner has preferred this petition under Section 11 of the Arbitration and Conciliation Act, 1996 for the appointment of an Arbitrator to adjudicate the dispute between the parties arising out of work order dated 23.05.2008.

The aforesaid work order was issued by the respondent to the petitioner for strengthening of Hambran Road by laying DBM and SDBC from RD-0 to RD-5100. The work assignment was given to the petitioner with a time limit of four months involving expenditure of Rs.3,27,64,084/- i.e. 50% of the total estimated work. The time limit was extended up to 31.12.2009 for completion of work and the work was completed. The petitioner submitted its final bill and the official respondents sent requisite note for making payment of final bill on 15.03.2012, but the payment of the bill in a sum of Rs.41,69,511/- was not recommended by the concerned AE, XEN and SE Incharge and the relevant file could not be traced. Thereafter, despite preparation of duplicate file, needful was not done by the respondent. The petitioner has pleaded all these facts in para No.3 of the petition to which the following stand has been taken in the reply:-

“That the contents of Para No.3 of the writ petition are wrong and denied. It is true to the extent that original file was lost and duplicate file of the work was prepared. But the payment of the agency has never been delayed due to the above said facts. It is also correct that record entries so as to execution of the work recorded in the measurement book were

found to be correct. The Contractor has been penalized for delay in the execution of work.”

Thereafter, the petitioner issued a legal notice on 17.11.2012 for making payment of the work done. Owing to inaction on behalf of the respondent- Municipal Corporation, the petitioner ultimately ventured to file CWP No.1636 of 2013, which was disposed of on 25.01.2013 with a direction to the Municipal Corporation to decide the legal notice of the petitioner within a period of two months from the date of receipt of copy of the order. When no decision was made within the time prescribed, the petitioner filed COCP No.1198 of 2013 and the same was admitted vide order dated 13.05.2013.

Since the contempt petition was not likely to be listed for hearing, the petitioner issued a notice dated 16.11.2018 to which reply was filed by the respondent on 10.01.2019, replying therein that vide order dated 08.05.2015, an order was passed by the respondent, thereby imposing penalty of 10% and the final bill and security were ordered to be released after deducting the penalty amount. An application was filed by the petitioner in the admitted contempt petition and the same was ordered to be disposed of with liberty to the petitioner to assail the order of rejection of the claim. On account of 10% penalty, an amount of Rs,33,43,274/- was deducted from the entitlement of the petitioner.

Learned counsel for the petitioner submits that the delay, if any, occurred is due to availing remedies by the petitioner at different stages and cause of action always remained intact. The payment of the final bill was refused only on 15.03.2012 and there is no specific denial to the averments made in para No.3 of the petition. A very evasive reply has been

given in corresponding para No.3 of the written statement.

It is a settled principle of law that even in a case of slightest doubt as regards the accrual of cause of action and the delay, the matter has to be referred to the Arbitrator. The Arbitrator can adjudicate the issue of delay as well as cause of action on the basis of material to be adduced before him. The petitioner has tentatively valued its claim to the tune of Rs. 41,69,511/- along with interest.

In view of the aforesaid facts, I hereby appoint Sh.Amarjit Singh Katari, Additional District and Sessions Judge (Retd.), House No.145, Phase 3B-1, Sector 60, SAS Nagar, Mohali (Mobile NO.9814112041) as the sole Arbitrator, to resolve the dispute/difference between the parties. The appointment of the Arbitrator shall be subject to the declaration to be made by him as required under Section 12 of Arbitration and Conciliation Act, 1996 in respect of his independence and impartiality to settle the dispute between the parties.

The Arbitrator would complete the proceedings within the specified time in terms of Section 29-A of the said Act. The Arbitrator shall be paid fee in accordance with the IVth Schedule of the Act as amended from time to time. The fee shall be borne by both the parties equally.

Venue of the Arbitration shall be the place to be disclosed by the Arbitrator according to his convenience.

A copy of this order be dispatched to the Arbitrator at the following address:-

“Sh.Amarjit Singh Katari, Additional District and Sessions Judge (Retd.), House No.145, Phase 3B-

1, Sector 60, SAS Nagar, Mohali (Mobile
No.9814112041)”

Petitions stand disposed of accordingly.

(RAJ MOHAN SINGH)
JUDGE

December 20, 2022

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Whether speaking/reasoned Yes/No

Whether reportable Yes/No